

Senate Bill No. 1146

CHAPTER 345

An act to amend and repeal Section 19551.1 of, to amend, repeal, and add Section 19551 of, and to add and repeal Section 19551.5 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 26, 2008. Filed with
Secretary of State September 26, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1146, Cedillo. Tax administration: disclosure of information: Franchise Tax Board and cities.

Existing income tax laws authorize tax officials of a political subdivision of the state to request information from the Franchise Tax Board by using an affidavit, as provided. Existing law also authorizes the Franchise Tax Board, until December 31, 2011, to disclose to tax officials of any city that executed an agreement with the Franchise Tax Board, subject to certain specified requirements, a taxpayer's name, address, social security or taxpayer identification number, and business activity code, as provided, but limits the use of that information to employees of the taxing authority of a city.

This bill would revise those provisions by extending that repeal date to January 1, 2014, by authorizing a city that has entered into a reciprocal agreement, as defined, with the Franchise Tax Board to exchange tax information, as provided, and by allowing a city to request any other information from the Franchise Tax Board by using an affidavit, as provided.

This bill would, with a specified exception, require cities to annually furnish to the Franchise Tax Board, upon request of the Franchise Tax Board, specified information that is collected in the course of administration of the city's business tax program, as described, and would repeal these provisions on January 1, 2014. By imposing additional duties on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that reimbursement for these costs shall be provided for at a specified rate in the annual Budget Act beginning in the 2009–10 fiscal year and each fiscal year thereafter. This bill would also provide that, if the Commission on State Mandates determines that the costs to local agencies exceed the specified rate, the provisions of the bill shall be repealed or if a California court of appellate jurisdiction determines that the costs to local agencies exceed the specified rate, the provisions of the bill shall be repealed.

The people of the State of California do enact as follows:

SECTION 1. Section 19551 of the Revenue and Taxation Code is amended to read:

19551. (a) The Franchise Tax Board may permit the Commissioner of Internal Revenue of the United States, other tax officials of this state, the Multistate Tax Commission, the proper officer of any state imposing an income tax or a tax measured by income or the authorized representative of that officer, or the tax officials of Mexico, if a reciprocal agreement exists, to inspect the income tax returns of any taxpayer, or may furnish to the commission, or the officer or the authorized representative thereof an abstract of the return or supply thereto information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return. The information shall be furnished to the Multistate Tax Commission, the federal or state officer or his or her representative, or the officials of Mexico for tax purposes only. Except when furnished pursuant to a written agreement, information furnished pursuant to this section shall be furnished only if the request is in the form of an affidavit under penalty of perjury stating that the purpose for the request relates to an investigation of the tax specified in the request and that the information will be used in the ordinary performance of the applicant's official duties.

(b) Notwithstanding subdivision (a) and except as otherwise provided in Section 19551.1, tax officials of political subdivisions of this state shall request information from the Franchise Tax Board by affidavit only. At the time a tax official makes the request, he or she shall provide the affected person with a copy of the affidavit and, upon request, make the information obtained available to that person.

(c) For purposes of this section, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(d) This section shall remain in effect through and including December 31, 2013, and shall be repealed on January 1, 2014.

SEC. 2. Section 19551 is added to the Revenue and Taxation Code, to read:

19551. (a) The Franchise Tax Board may permit the Commissioner of Internal Revenue of the United States, other tax officials of this state, the Multistate Tax Commission, the proper officer of any state imposing an income tax or a tax measured by income or the authorized representative of that officer, or the tax officials of Mexico, if a reciprocal agreement exists, to inspect the income tax returns of any taxpayer, or may furnish to the commission, or the officer or the authorized representative thereof an abstract

of the return or supply thereto information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return. The information shall be furnished to the Multistate Tax Commission, the federal or state officer or his or her representative, or the officials of Mexico for tax purposes only. Except when furnished pursuant to a written agreement, information furnished pursuant to this section shall be furnished only if the request is in the form of an affidavit under penalty of perjury stating that the purpose for the request relates to an investigation of the tax specified in the request and that the information will be used in the ordinary performance of the applicant's official duties.

(b) Notwithstanding subdivision (a), tax officials of political subdivisions of this state shall request information from the Franchise Tax Board by affidavit only. At the time a tax official makes the request, he or she shall provide the affected person with a copy of the affidavit and, upon request, make the information obtained available to that person.

(c) For purposes of this section, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(d) This section shall become operative on January 1, 2014.

SEC. 3. Section 19551.1 of the Revenue and Taxation Code is amended to read:

19551.1. (a) (1) The Franchise Tax Board may permit the tax officials of any city to enter into a reciprocal agreement with the Franchise Tax Board to obtain tax information from the Franchise Tax Board, as specified in subdivision (b).

(2) For purposes of this section, "reciprocal agreement" means a formal agreement to exchange information for tax administration purposes between tax officials of a city and the Franchise Tax Board.

(b) The information furnished to tax officials of a city under this section shall be limited as follows:

(1) The tax officials of a city are authorized to receive information only with respect to taxpayers with an address as reflected on the Franchise Tax Board's records within the jurisdictional boundaries of the city who report income from a trade or business to the Franchise Tax Board.

(2) The tax information that may be provided by the Franchise Tax Board to a city is limited to a taxpayer's name, address, social security or taxpayer identification number, and business activity code.

(3) Tax information provided to the taxing authority of a city may not be furnished to, or used by, any person other than an employee of that taxing authority.

(4) The information provided to the tax officials of the city by the Franchise Tax Board under this section is subject to Section 19542, and may not be used for any purpose other than the city's tax enforcement, or as otherwise authorized by state or federal law.

(5) Section 19542.1 applies to this section.

(c) The Franchise Tax Board may not provide any information pursuant to this section until all of the following have occurred:

(1) An agreement has been executed between a city and the Franchise Tax Board, that provides that an amount equal to all first year costs necessary to furnish the city information pursuant to this section shall be received by the Franchise Tax Board before the Franchise Tax Board incurs any costs associated with the activity permitted by this section. For purposes of this section, first year costs include costs associated with, but not limited to, the purchasing of equipment, the development of processes, and labor.

(2) An agreement has been executed between a city and the Franchise Tax Board, that provides that the annual costs incurred by the Franchise Tax Board, as a result of the activity permitted by this section, shall be reimbursed by the city to the Franchise Tax Board.

(3) Pursuant to the agreement described in paragraph (1), the Franchise Tax Board has received an amount equal to the first year costs.

(d) Any information, other than the type of tax information specified in subdivision (b), may be requested by the tax officials of a city from the Franchise Tax Board by affidavit. At the time a tax official makes the request, he or she shall provide the person whose information is the subject of the request, with a copy of the affidavit and, upon request, make the information obtained available to that person.

(e) This section does not invalidate any other law. This section does not preclude any city or county from obtaining information about individual taxpayers, including those taxpayers not subject to this section, by any other means permitted by state or federal law.

(f) Nothing in this section shall be construed to affect any obligations, rights, or remedies regarding personal information provided under state or federal law.

(g) Notwithstanding subdivision (c), the Franchise Tax Board shall waive a city's reimbursement of the Franchise Tax Board's cost if a city enters into a reciprocal agreement as defined in paragraph (2) of subdivision (a). The reciprocal agreement shall specify that each party shall bear its own costs to furnish the data involved in the exchange authorized by this section and Section 19551.5, and a city shall be precluded from obtaining reimbursement as specified under Section 5 of the act adding this subdivision.

(h) This section shall remain in effect through and including December 31, 2013, and shall be repealed on January 1, 2014.

SEC. 4. Section 19551.5 is added to the Revenue and Taxation Code, to read:

19551.5. (a) Notwithstanding any other law, each city that assesses a city business tax or requires a city business license shall, upon the request

of the Franchise Tax Board, annually submit to the Franchise Tax Board the information that is collected in the course of administration of the city's business tax program, as described in subdivision (b).

(b) Information, collected in the course of administration of the city's business tax program, shall be limited to the following:

(1) Name of the business, if the business is a corporation, partnership, or limited liability company, or the owner's name if the business is a sole proprietorship.

(2) Business mailing address.

(3) Federal employer identification number, if applicable, or the business owner's social security number.

(4) Standard Industrial Classification Code (SIC) or North American Industry Classification System (NAICS) Code.

(5) Business start date.

(6) Business cease date.

(7) City number.

(8) Ownership type.

(c) The reports required under this section shall be filed on magnetic media such as tapes or compact discs, through a secure electronic process, or in other machine-readable form, according to standards prescribed by regulations promulgated by the Franchise Tax Board.

(d) Cities that receive a request from the Franchise Tax Board shall begin providing to the Franchise Tax Board the information required by this section as soon as economically feasible, but no later than December 31, 2009. The information shall be furnished annually at a time and in the form that the Franchise Tax Board may prescribe by regulation.

(e) The city data provided to the Franchise Tax Board under this section is subject to Section 19542, and may not be used for any purpose other than state tax enforcement or as otherwise authorized by law.

(f) If a city enters into a reciprocal agreement with the Franchise Tax Board pursuant to subdivision (a) of Section 19551.1, the city shall also waive reimbursement for costs incurred to provide information required under this section and shall be precluded from obtaining reimbursement as specified under Section 5 of the act adding this subdivision. The reciprocal agreement shall specify that each party shall bear its own costs to furnish the data involved in the exchange authorized by Section 19551.1 and this section, and the Franchise Tax Board shall be precluded from obtaining reimbursement as specified under subdivision (c) of Section 19551.1.

(g) A city shall not be required to provide information to the Franchise Tax Board pursuant to this section if the Franchise Tax Board fails to provide tax information to the city pursuant to a reciprocal agreement entered into pursuant to subdivision (a) of Section 19551.5 for reasons other than concerns related to confidentiality of tax information provided to the city.

(h) This section shall remain in effect through and including December 31, 2013, and shall be repealed on January 1, 2014.

SEC. 5. (a) Reimbursement to local agencies for those costs mandated by the state pursuant to this act shall be provided by the Franchise Tax Board

beginning in the 2009–10 fiscal year and each fiscal year thereafter, by an appropriation in the annual Budget Act. Reimbursement for costs mandated by the state pursuant to Section 19551.5 of the Revenue and Taxation Code, as added by this act, shall be for actual costs incurred by the local agency to provide records in the manner prescribed by the Franchise Tax Board, not to exceed a rate of one dollar (\$1) per usable record submitted by the local agency to the Franchise Tax Board beginning in the 2009–10 fiscal year. The rate shall be annually adjusted in the Budget Act for the implicit price deflator.

(b) In the event of a determination by the Commission on State Mandates that the costs mandated by the state pursuant to this act exceed the rate provided for by subdivision (a), this act shall be repealed 90 days after the date on which the Commission on State Mandates adopts the statement of decision.

(c) (1) This act shall not be repealed pursuant to subdivision (b) if the Director of Finance files a written Notice of Intent to Appeal with the Commission on State Mandates within 90 days of the adoption of a statement of decision finding that the costs mandated by the state pursuant to this act exceed the rate provided for by subdivision (a). The Notice of Intent to Appeal shall consist of a written notice setting forth the intention of the Director of Finance to seek judicial review of the decision of the Commission on State Mandates.

(2) In the event of a determination by a California court of appellate jurisdiction that the costs mandated by the state pursuant to this act exceed the rate provided for by subdivision (a), this act shall be repealed 90 days after the date on which the judicial determination becomes final.